IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 153 of 2005
With
COMPANY PETITION No. 154 of 2005
With
COMPANY APPLICATION No. 340 of 2006
In
Company Petition No. 153 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ELECTRON COLOUR CHEM PVT LTD. - Petitioner(s)
Versus
HARDEEP SYNTHETICS PVT LTD. - Respondent(s)

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Appearance :
MR HARDIK C RAWAL for Petitioner(s) : 1,MRS MH RAWAL for Petitioner(s) : 1,
MR DHARMESH V SHAH for Respondent(s) : 1,
MR LALIT M PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 15/09/2006

ORAL JUDGMENT

These Company Petitions are filed for winding up of Hardeep Synthetics Pvt.Ltd., under the provisions of the Companies Act, 1956.

2. It is submitted on behalf of petitioners of Company Petition No. 153 of 2005 that the respondent Company is indebted to the petitioner for a principal portion of Rs. 6,94,250 plus interest of Rs. 49,211.68 ps. It is also submitted on behalf of the petitioner of Company Petition No. 154 of 2005 that the respondent company is indebted to the petitioner for a principal sum of Rs. 14,30,583.76 ps. Plus interest amount of Rs. 4,10,275.15 ps. It is further submitted by the respective petitioners that inspite of repeated requests and demands the aforesaid amounts have not been paid and therefore the petitioners were constrained to serve statutory notices upon the respondent company under Section 434 of the Companies Act, 1956 and inspite of service of the same the

aforesaid amounts have not been paid; according to the petitioners the respondent Company is not in a position to pay off its dues and has become insolvent within the provisions of the Companies Act; the company has lost its substratum; and therefore it is requested to allow the present petitions and to pass the order of winding up of the respondent company. This Court issued notices in the present petitions. An affidavit-in-reply came to be filed on behalf of the respondent Company. It was clearly stated by the respondent Company that the respondent Company had accumulated loss of Rs. 227.52 lacs against the net-worth of Rs. 18.84 lacs; the respondent Company had incurred losses of Rs. 111.07 lacs at the year ended on 31.3.2005; and Rs. 58.39 lacs at the year ended on 31.3.2004. Considering the reply filed by the respondent Company, this Court admitted both the petitions and it was ordered to give advertisements in two daily newspapers, Indian Express, Ahmedabad and Jansatta

(Gujarati), Ahmedabad. It is reported that accordingly, the Notice of admission was advertised in local newspapers, namely 'Indian Express' [English Edition] and 'Jansatta' [Gujarati Edition]. No objections are received against the winding up of the respondent Company. Even after the admission of the aforesaid petitions and release of advertisements of the admission, the respondent Company has not done any thing. It has not paid up the dues of the petitioners nor it has settled the matter. The Company has not come out with any affidavit that the Company is a profit making company or is able to discharge its liabilities and debts. The respondent Company has also not proposed and/or submitted any application for compromise under Section 399 of the Companies Act to this Court.

3. Considering the Affidavit-in-Reply, and considering the facts that even the respondent Company had accumulated loss of Rs. 227.52 lacs

against the net-worth of Rs. 18.84 lacs; the respondent Company had incurred loss of Rs. 111.07 lacs at the year ended on 31.3.2005, and Rs. 58.39 lacs at the year ended on 31.3.2004; the Company is not a viable company and it is not possible for the Company to discharge its liabilities and debts; the Company has lost its substratum; and the company has become insolvent within the provisions of the Companies Act, 1956. The dues are admitted. No further objections are submitted by the respondent Company against the winding-up of the Company.

4. For the reasons stated above, both the petitions are allowed. The respondent Company is directed to be wound up. The Official Liquidator, attached with this Court, is appointed as Official Liquidator for the respondent Company. The Official Liquidator is hereby directed to take possession of the properties [movable and immovable] of the

respondent Company along with its Bank accounts, cash, account books etc. The Official Liquidator shall submit his Report within the period of 3 months; if required, he can take services of Official Valuer for the purpose of preparation of possession note etc. No costs. These petitions are accordingly allowed.

5. In view of disposal of both the Company Petitions, no order in Company Application No. 340 of 2006 at this stage. Appropriate orders will be passed as and when appropriate application is made by the Official Liquidator to that effect.

[M.R. Shah, J.]

RMR.